

DETAILED ACTION

This action is responsive to application 10/689556 filed on 10/23/2003. Claims 1-25 have been examined. Applicant has submitted affidavit in response to reference “Bugs as Deviant Behavior: A General Approach to Inferring Errors in Systems Code”, 2001.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1, 9, 10, and 18 recite “outputting the violations in order of the likelihood of validity of a violated correctness rule” however this limitation is unclear since “the violations” lack antecedent basis. There is no indication in the claims that a violation is determined. There is only the counting of violations, which is then used in a function with the counted number of observances to determine the likelihood of a validity of a piece of code. The counting of the violations does not include a determination of their likelihood of validity, which is what the last limitation in the claim is reciting when it recites “in order of the likelihood of validity”. Claims 2-8, 11-17, and 19-25 are rejected based on their dependency.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-25 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

In determining whether the claim is for a "practical application," the focus is not on whether the steps taken to achieve a particular result are useful, tangible, and concrete, but rather that the final result achieved by the claimed invention is useful, tangible and concrete. If the claim is directed to a practical application of the §101 judicial exceptions producing a result tied to the physical world that does not preempt the judicial exception, then the claim meets the statutory requirement of 35 U.S.C. §101.

The claims are a manipulation of abstract concepts and are not clear in purpose or scope. Variations on the phrases in the claims, such as 'causing', 'merging' and 'making a decision' do not provide a clear purpose or scope for the claimed invention.

The invention must be for a practical application and either:

- 1) specify transforming (physical thing - article) or
- 2) have the Final Result (not the steps) achieve or produce a
useful (specific, substantial, AND credible),
concrete (substantially repeatable/non-unpredictable), AND
tangible (real world/non-abstract) result
(tangibility is the opposite of abstractness).

The independent claims recite 1, 9, 10, and 18 a final result of "outputting the violations" however there is no process given to determine these violations. A "likelihood of validity" is determined from a function of counted number of observances and counted number of violations,

however, there is no application of this function in the determination of what "the violations" are. There is no credible and substantially repeatable way that these violations are being determined based on the language in the claim.

Appropriate corrections are required.

Conclusion

The prior art of record and not relied upon is considered pertinent to the applicant's disclosure.

- Engler et al. ("Checking System Rules Using System-Specific, Programmer-Written Compiler Extensions", 2000)
- You (Pat. 6158045)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa Berman whose telephone number is 571-270-1393. The examiner can normally be reached on 9/4/5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Vincent can be reached on 571-272-3080. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/David R Vincent/

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